

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

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UNITED STATES OF AMERICA

CASE NO: 8:0CR-77- T-30TBM

vs,

SAMEEH HAMMOUDEH
/

**AMENDED MOTION TO QUASH ALLEGATIONS IN PARAGRAPH 43, OVERT
ACTS 52, 120, 123, 125, 126, 133, 138, 145-149, 152, 153, 160, AND 173
OF THE INDICTMENT, AND MOTION TO DISMISS COUNTS 5-9, 11-13,
AND 15 OF THE INDICTMENT**

COMES NOW, the Defendant, SAMEEH HAMMOUDEH, by and through his undersigned counsel, pursuant to Federal Rules of Criminal Procedure 6(b)(3)(E)(i), 6(b)(3)(E)(ii), and 12 hereby respectfully request that this Honorable Court to Quash the Allegations contained in paragraph 43 in Overt Acts 43, 52, 120, 123, 125, 126, 133, 138, 145, 146, 147, 148, 149, 152, 153, 160 and 173 of the Indictment and dismiss Counts 5-13 and 15 and as grounds would state the following:

1. Overt Act 52 involves a facsimile sent from WISE to Co-Defendant Al Arian's home fax on February 13, 1994 and consist of a newspaper article and was sent at 6:52 a.m. according to the ledgers at the top of the page. Normal hours for those who work at WISE would not begin until 8:00 a.m. and therefore is no reasonable assumption that the Defendant Sameeh Hammoudeh in any way would be alert to this facsimile. There is no evidence to connect the Defendant Sameeh Hammoudeh to this facsimile.

2. Overt Act 120 involves a facsimile on December 14, 1994 consisting of a weekly article written specifically by Ramadan Shallah for the "Al-Istiqlal" newspaper in Gaza. Both the

article and the facsimile is entitled "Maraya" and was the product of Ramadan Shallah alone and there is no evidence to connect the Defendant Sameeh Hammoudeh to this facsimile or this article.

3. Overt Act 123: The government claims that on January 26, 1995, Sami Al Arian, Ramadan Shallah, Sameeh Hammoudeh and Mazin Al Najjar received a facsimile at WISE/ICP which contains an article about the Beit Lid bombing,..., "and how money and resources spent on Arab Armies could be better spent to support the PIJ."

a) This facsimile was first received at a fax machine that has header 00000000 OMIGA &. This fax machine as the government noted in tens of transactions is Ramadan Shallah's home fax. The facsimile was then re transmitted to WISE.

It is most probable that Ramadan's wife received the facsimile while he was at WISE and she sent it to him to read it.

b) Defendant Hammoudeh was not working at WISE at the time. He was at the IAF. The facsimile was received at WISE at 2:09 p.m.

c) The Indictment mistates the Government's own translation to the article. The translator recorded the statement as: "..., and how money and resources spent on organized Arab armies, can provide so much support to the warriors of Palestine" but the Indictment reads: "and how money and resources spent on Arab armies could be better spent to support the PIJ."

d) The Indictment omits important information about this article known to the Government. Their own translation reads: "This one page typed fax is an article extracted from the magazine, "ALKABASS" of Kuwait, dated 24/1/95." This is very important because it was Mr. Shallah who was recorded discussing with others the idea of collecting newspaper articles

about the Beit Lid and publishing them in a special pamphlet.

Defendant Hammoudeh never discussed this bombing with anybody nor had any interest in celebrating it. Overt Acts 125 and 126 deal with the same subject matter.

4. Overt Act 133 involves a facsimile which the Indictment incorrectly states was received at WISE/ICP in Tampa, Florida when the evidence from the document itself demonstrates that it was addressed to a single person, "the dearest brother," and was received at Ramadan Shallah's telephone fax number. The content of this letter was also discussed by Ramadan Shallah as recorded on the FISA wiretap. There is no evidence that the Defendant Sameeh Hammoudeh ever received facsimiles at Ramadan Shallah's residence nor that he had discussions about the transcripts. There is also evidence (Overt Act 135) that Ramadan Shallah has been addressed as "the dearest brother" in other communications. In this overt act, the government claims that Sami Al-Arian, Ramadan Shellah, Sameeh Hammoudeh, and Mazin Al-Najjar received a facsimile at WISE/ICP in Tampa from Fathi Shiqaqi on 2/22/95.

a) This facsimile was received by Ramadan Abdullah Shallah on his fax line (# (813) 989-3445) and the Government's "Translation Cover Sheet" clearly indicates that the intercepted phone line is (813) 989-3445.

b) The facsimile is addressed to one person only, not four. The sender, SALEM, addressed it to "Dear brother," in the singular not the plural.

c) identifying "Dear brother" is readily possible by analyzing the content of this facsimile and by comparing it with the context of other facsimiles sent or received by Ramadan Shallah.

One of the subjects mentioned in this facsimile is "Al-Diyar" newspaper. Salem, the sender, informs the receiver that, as in the government's translation, "its published and strictly

distributed in Lebanon by a Christian...” This comes as an answer to a question about “Al-Diyar” newspaper which was sent by Ramadan Shallah to Shakir on 2/21/95 (one day before the facsimile of Overt Act 133). According to the Government’s translation of the 2/21/95 facsimile (TR001008), Mr. Shallah wrote: “I’ve never heard of “Al-Diyar” before.”

Thus, it was Mr Shallah who requested and received information about this newspaper.

d) The Government’s translator knew who received this facsimile. The following is what a CWO BASSILI commented on this facsimile:

“It appears that the individual who faxed this information was basically alerting RAMADAN to a fund raising trip that he (RAMADAN) might be very interested in... now that RAMADAN has left the U.S.,...” (Emphasis added).

5. Overt Act 138 states: “On or about March 4, 1995, SAMI AMIN AL-ARIAN, RAMADAN ABDULLAH SHALLAH, SAMEEH HAMMOUDEH and Unindicted Co-Conspirator Twelve received a facsimile signed by Abu Nassar at WISE from the Gaza Strip. Later, SAMI AMIN AL-ARIAN, RAMADAN ABDULLAH SHALLAH, SAMEEH HAMMOUDEH and Unindicted Co-Conspirator Twelve re-transmitted the facsimile to Fathi Shiqaqi in Damascus, Syria. The facsimile directed Fathi Shiqaqi to contact Nassar Yousef/ Abu Jousif.” The facsimile was signed by Abu Nassar.

a) This facsimile carries the number TR001558 and was first received at Shallah’s home, not at WISE, and was signed by Abu Nidal, not Abu Nassar. (The government’s own translation says Abu Nidal).

b) The facsimile asked Abu Ibrahim, not Fathi Shiqaqi, to contact General Nasr Yousef/ Abu Yousif, not Nassar Yousef. (The government’s translation says Nasr).

c) The facsimile was re transmitted from Ramadan Shallah's home. "The Government's Translation Cover Sheet," states the following about the re transmitted fax:

(fax # TR001604):

"A one page fax, in Arabic, consisting of handwritten text. Sender has header 5/12/1991 00000000 OMIGA & (sender number is (813) 989-3445 RAMADAN ABDULLAH)."

d) This same "Translation Cover Sheet" states that this was the same as fax # TR001558 received 17 hours earlier with some additions at the beginning and at end." The addition at the end states: "Touched base with RADWANE but he was on the road. His folks could not forward it. A.M.N," according to the Government's translation. Thus it states clearly that the facsimile was sent to RADWAN, whom the government claims in the Indictment is RAMADAN SHALLAH.

e) The Government's memorandum dated 6/13/95 (To SAC, TAMPA (1994-TP-24324)(P), from; SA ROBERT ROSI, is a summary of a phone conversation, occurring on 3/4/95, between RAMADAN ABDULLAH and an unknown Arab male (UAM) and it is there noted that:

- 1- RAMADAN asked UAM to 'give him a line' to send a fax (See fax # TR 001604).
- 2- After sending the fax, RAMADAN conducted a brief conversation with UAM."

Fax # TR 001604 is the same fax referred to in OA 138 and claimed to be received and re transmitted by Sami Al Arian, Ramadan Shallah, Sameeh Hammoudeh, and Mazin Najjar at WISE. When the above shows that it was received and re transmitted by Ramadan Shallah alone at his house.

7. In Overt Act 145 the Government claims that Sami Amin Al-Arian, Ramadan

Abdullah Shallah, Sameeh Hammoudeh, and Mazin Al Najjar caused on March 18, 1995 a facsimile to be sent to "brother Yousef" in Israel and shortly there after received a facsimile from Yousef.

a) While the Government in Over Act 143 says that the call was between Ramadan Shallah and unknown male, the government's translation of the phone conversation indicates that it was between Ramadan Shallah and Yousef per fax # TR 002528. It also states at the end of the summary: "In closing Ramadan asked Yousef to give him a line to send him a fax." Shallah was calling from his home's fax line, (813) 989-3445.

b) Overt Act 144 states that Ramadan Shallah talked with Fathi Shiqaqi who requested that Yousef call him. Then Shallah called an unidentified male, and conveyed the message. Again, the Government's translation of this call indicates that Shallah called Yousef (a.k.a. IBN EL-HAJJ Voice ID) and that this call was also from Shallah's home fax line, (813) 989-3445.

c) It is clear that only Shallah is contacting Yousef who received and sent the faxes mentioned in Overt Act 145 and that the two faxes mentioned in Overt Act 145 were sent or received by line # (813) 989-3445, Shallah's fax line.

d) Not only that, but both faxes are signed by or addressed to one person only , not four. The first fax is signed by Muhammad F (ateh), an alias to Ramadan Shallah as in the Indictment. The second fax is addressed to Abu Rashad, which is clearly another alias name to Shallah, since it answers his questions.

7. Overt Act 148 alleges a March 14, 1995 facsimile received at WISE, when in fact, it was received at Ramadan Shallah's home fax number. Furthermore, there is a hand written note on the facsimile itself which states "reached Radwan while he was traveling and my wife could

not send it yesterday” and the handwriting is the same as other letters written by Ramadan Shallah. There is no evidence to support any allegations that Defendant Sameeh Hammoudeh ever received any facsimiles at Ramadan Shallah’s home, wrote any of the handwritten notes or was involved in any of the factual information contained on the documents themselves.

8. Overt Act 145 through 149, 152, 133, 160, and 173 all were alleged to have been received at WISE when in fact they were received at the home of Ramadan Shallah, as established by the telephone number listed at the top of the documents themselves and recorded by the facsimile machine at the time of transmission and reception.

9. The facsimile referred to in Overt Act 145 was signed by Mohammad F. and the reply that ensued was addressed to Abu Rashad. There is no evidence to connect the Defendant Sameeh Hammoudeh to either of these individuals.

10. Overt Acts 148 and 149 were addressed to A. Abdullah, which is a known nickname for Ramadan Shallah.

11. Overt Act 152 states that on or about April 9, 1995, SAMI AMIN AL-ARIAN, RAMADAN ABDULLAH SHALLAH, SAMEEH HAMMOUED and Unindicted Co-Conspirator Twelve received a facsimile, on PIJ letterhead, with the PIJ logo, at WISE/ICP in Tampa Florida. The facsimile, which was sent from outside the state of Florida, announced the death of the PIJ martyr Khalid AL Khatib, who carried out the suicide bombing at Kfar Darom. Approximately one minute after this facsimile was received at WISE/ICP, a conspirator retransmitted it to SAMI AMIN AL-ARIAN in Tampa, Florida.”

a) However, the fact is that the original fax was received at (813) 989-3445, Ramadan Shallah’s fax line and it carries # TR 004497.

b) The Government's "Translation Cover Sheet" for the re transmitted fax states the following: "This is a re transmittal of fax TR 004497 received one minute earlier. Sender has header 06/17/1991 00000000 OMIGA &, (sender # is (813) 989-3445, RAMADAN ABDULLAH)."

While it is obvious that this fax was received and re transmitted from Ramadan Shalla's home, Sameeh Hammoudah is improperly charged with count 11 (Travel Act) based on this fax.

12. Overt Acts 135 and 154 involve two facsimiles which were received at telephone number (813) 989-3445 and the Government properly attributes them to Ramadan Shallah in the Indictment. The question is why the other facsimiles received at the same number were not attributed to him. These facsimiles include the ones used on Overt Acts: 123, 133, 138, 145, 146, 147, 148, 149, 152, 153, and 160.

13. Overt Acts 132 and 173: The Government says that these facsimiles were received or sent by Ramadan Shallah at/from WISE when the fact is evident that the facsimiles were received at his house, line # (813) 989-3445, not at WISE.

14. Overt Act 173: The government claims that : "On or about June 2, 1995, RAMADAN ABDULLAH SHALLAH sent out a facsimile from WISE/ICP offices in Tampa, Florida, to Fathi Shiqaqi...."

The Government's own "Translation Cover Sheet" states the following about this facsimile (Fax #: TR 009001) Sender has header 08/10/1991 00000000 OMIGA &, (sender # is (813) 989-3445, RAMADANABDULLAH)."

Thus this fax was not sent from WISE office as is claimed in the Indictment.

15. Count 5, 6, 7, 8, 9, 11, 12, 13, and 15 are all based on Overt Acts which involved

facsimiles alleged to have been received at WISE when in fact the documents themselves indicate that all of these facsimiles were received at Ramadan Shallah's home fax number and there is no evidence which connects the Defendant Sameeh Hammoudeh to either the transmission or the reception of these facsimiles.

MEMORANDUM IN SUPPORT

Rule 7(c)(1) of the Federal Rules of Criminal Procedure states an Indictment "must be plain, concise, and definite written statement of the essential facts constituting the offense charge ..." In order to sustain a conviction under 18 U.S.C. Section 1952 (a)(2) and (3), the Government must prove that Mr. Hammoudeh traveled in interstate or foreign commerce or used the mail or any facility in interstate or foreign commerce with the intent to distribute the proceeds of unlawful activity or commit any crime of violence to further any unlawful activity." This motion demonstrates that there are no clear facts to support such an allegation and that when the Government's own translations are utilized that there is no factual support for the allegations contained in paragraph 43 Overt Act 52, 120, 123, 125, 126, 133, 138 and 145-149, 152, 153, 160 and 173 and that Counts 5-9, 11-13, and 15 of the Indictment should be therefore dismissed. In *United States v. Gaddis* 424 U.S. 544, 96 S. Ct. 1023, 47 L. Ed. 2d 222 (1976), the Court found where the evidence there was insufficient to support the allegations in the Indictment that a defendant was guilty of receiving proceeds of a robbery "from a robber" and that the trial court should have dismissed that count of the Indictment which charged him with possessing the proceeds of the robbery. The facts in this case are as clear as there were in *Gaddis* and the Defendant hereby request that this court dismiss pretrial the unsupported allegations.

WHEREFORE, the Defendant, SAMEEH HAMMOUDEH requests that this Court

Dismiss counts 5, 6, 7, 8, 9, 11, 12, 13, and 15 of the Indictment and strike the Overt Acts 52, 120, 123, 125, 126, 133, 136, 138, 145-149, 152, 153, 160, and 173.

Respectfully Submitted,



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by regular U.S. mail delivery on this 3 date of August, 2004.

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